IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CRIMINAL JURISDICTION

CRIMINAL WRIT PETITION NO.2060 OF 2005

Mr.Sham Prabhakar Phadnis .. Petitioner

v/s.

The State of Maharashtra & ors. .. Respondents

ALONGWITH

CRIMINAL WRIT PETITION NO.2061 OF 2005

Mr.Jitendra Raghunath Todkar .. Petitioner

v/s.

The State of Maharashtra & ors. .. Respondents

ALONGWITH

CRIMINAL WRIT PETITION NO.2062 OF 2005

Mr.Shahvaz Abdul Sabur Khan .. Petitioner

v/s.

The State of Maharashtra & ors. .. Respondents

ALONGWITH

CRIMINAL WRIT PETITION NO.2352 OF 2005

Mr.Shailesh Jayanti Tiwari .. Petitioner

v/s.

The State of Maharashtra & ors. .. Respondents

ALONGWITH

CRIMINAL WRIT PETITION NO.2354 OF 2005

Mr.Shamsuddin Sayyed Mohammed .. Petitioner

v/s.

The State of Maharashtra & ors. .. Respondents

ALONGWITH

CRIMINAL WRIT PETITION NO.2362 OF 2005

Mr.Sakharam Appa Latam .. Petitioner

v/s.

The State of Maharashtra & ors. .. Respondents

Mr.Akhilesh Singh for the petitioners.

Mr.A.M.Shingarpure, Addl. Public Prosecutor for the State.

CORAM : SMT.RANJANA DESAI AND ANOOP V. MOHTA, JJ.

DATED : 25th October, 2005.

P.C.

Rule.

2. By consent of the parties, this group of petitions is taken up for hearing forthwith.

3. In all these petitions, the petitioners have prayed that Chapter Case No.13 of 2005 pending before respondent No.2- Special Executive Magistrate, Pydhonie Division, be quashed and set aside and the impugned show-cause notice dated 8th June, 2005 bearing Chapter Case No.13 of 2005 be set aside.

4. We have heard the learned counsel for the petitioners at some length. We have heard the Additional Public Prosecutor Shri Shingarpure. We have also perused the affidavit in reply filed by Mangesh Ramakant Masurkar, Assistant Police Inspector, attached to L.T. Marg Police Station, Mumbai. Mr.Akhilesh Singh, learned counsel appearing for the petitioners contended that the petitioners are not habitual offenders. For application of section 110 of Criminal Procedure Code, a person has to be a habitual offender. He submitted that chapter proceedings should be initiated only against the habitual offenders and information contemplated under section 110 should be to the effect that because of the activities of the person against whom the chapter proceedings are initiated, there is likelihood of breach of public peace and tranquility. The learned counsel submitted that the order in the instant case is issued under section 110(g). It is the case of the respondents that the petitioners are so desperate and dangerous that they are a threat to public tranquility and they are hazardous to the community. The learned counsel for the petitioners contended that it is nowhere mentioned in the show-cause notice as to how the petitioners can be called desperate or hazardous. It is nowhere mentioned as to how their activities pose a threat to public peace or tranquility. The learned counsel further urged that the petitioners have filed reply to the show-cause notice and without

considering the reply, the petitioners were asked to furnish interim bonds in clear violation of the judgment of the Supreme Court in Madhu Limaye & anr. v. Sub Divisional Magistrate, Monghyr & ors., AIR 1971 SC 2486. The learned counsel also drew our attention to the judgment of this court in Santosh Vishwanath Shinde v. J.R.Sangam, Asstt.Commissioner of Police & anr., CRIMES II-1995(1), 571 wherein this court was concerned with sections 110 and 111 of the Criminal Procedure Code. It was observed by this court that order directing execution of the interim bond where no enquiry was commenced by the Magistrate is illegal and show-cause notice mentioning only solitary incident where there are no antecedents is also illegal. The petitioners against whom chapter proceedings are initiated are not habitual offenders. Only one case is registered against them and hence issuance of notice under section 110 and 111 of the Criminal Procedure Code is illegal. The learned counsel contended that in the light of the above judgments, the present chapter proceedings should be quashed.

5. We are unable to agree with the learned counsel for the petitioner. Firstly, in this case the interim bond is already executed. The case of the respondents is that the bond was taken after the enquiry was started. If that is so, then the ratio of the judgment of the Supreme Court in Madhu Limaye's case (supra), in our prima facie opinion, is not attracted to this case. In our opinion,

since the petitioners have filed reply and the proceedings have already started, they must participate in the enquiry and the enquiry should be concluded. It is true that in the show-cause notice, only one incident is mentioned but we have carefully perused the affidavit of Shri Masurkar, Police Inspector attached to L.T.Marg Police Station. It appears from the affidavit that on 12.4.2005 at about 7.30 p.m. Enforcement Inspector Shri Suresh Daulat Kharate attached to Bombay Municipal Corporation has implemented the scheme to remove the encroachment of the hawkers in the public place under the supervision of the superior authority. As per the order of Supreme Court, Deputy Commissioner, Special Branch attached to Mumbai Municipal Corporation has selected 'C' Ward to implement the scheme to remove the hawkers and eatable sellers. Accordingly, complainant and his associates alongwith the officers, workers, security officers, security guards and police officers started with the encroachment removal vehicle and they reached the Cotton Exchange Naka, Kalbadevi Road. They started taking action against the unauthorised hawkers' handcart. At that time, the petitioners and others gathered there and they formed unlawful assembly. They started shouting loudly and abusing the officers and also started manhandling them. The petitioners and the others started assaulting the Government servants with bamboo sticks, iron bars. They assaulted the Corporation security personnel who sustained injury on his head. They also assaulted the police

constables. In view of this affidavit, we are not inclined to interfere with the chapter proceedings. It is true that the view has been taken by this court that the chapter proceedings cannot be initiated where there is a single case registered against a person but the factual matrix of the present case is different from the one which was before this court in Santosh Vishwanath Shinde's case. What effect the conduct of the petitioners will have is the question which will be decided in the enquiry. In such serious cases, we would not like to interfere at the stage of show-cause notice. The learned Additional Public Prosecutor has stated before us that the bonds were taken after the enquiry began. The learned counsel for the petitioners disputes this. We do not want to express any opinion at this stage as the enquiry is in progress.

6. All the petitions are, therefore, liable to be dismissed and are accordingly, dismissed as such. We make it clear that nothing stated by us in this order should be treated as final expression of our opinion on the merits of the case of the parties. That would be for the authorities concerned to decide. The authorities concerned will dispose of the proceedings as expeditiously as possible.

Petitions disposed of in the aforesaid facts.

(SMT.RANJANA DESAI, J.)

(ANOOP V. MOHTA, J.)